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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANTICANCER, INC., a California corporation,

Case No. 09-CV-1311-WQH (JMA)

Plaintiff,

**GE HEALTHCARE INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF ITS
MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(B)(1) and 12(B)(6)**

v.
13 FUJIFILM MEDICAL SYSTEMS U.S.A., INC.,
14 d/b/a FUJIFILM LIFE SCIENCE, a New York
15 corporation; FUJIFILM CORPORATION, a
16 Japanese Corporation; GE HEALTHCARE INC.,
a Delaware corporation; and DOES 1-100,

Judge: Honorable William Q. Hayes
Courtroom: 4
Date: November 30, 2009
Time: 11:00 A.M.

Defendants.

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

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1 Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal of Rules of Civil Procedure,
 2 Defendant GE Healthcare Inc. (“GE Healthcare”) hereby moves to dismiss Plaintiff AntiCancer,
 3 Inc.’s (“AntiCancer”) First Amended Complaint (hereinafter, “Amended Complaint”). The only
 4 claim asserted against GE Healthcare is a claim for declaratory relief. That claim should be
 5 dismissed for lack of subject matter jurisdiction because it fails to allege facts showing the
 6 existence of a substantial and real controversy between AntiCancer and GE Healthcare, and
 7 instead seeks a declaratory judgment based solely upon AntiCancer’s unsupported speculation
 8 about possible future conduct of GE Healthcare and its customers. In addition, the Amended
 9 Complaint should be dismissed because it fails to state a claim upon which relief can be granted;
 10 the Amended Complaint does not allege any facts that support a claim of patent infringement,
 11 induced patent infringement, or any other breach of a legal obligation by GE Healthcare.
 12

14 **INTRODUCTION**

15 The Amended Complaint (like the initial Complaint) is focused primarily on claims
 16 against Defendants FUJIFILM Medical Systems U.S.A., Inc. and FUJIFILM Corporation
 17 (collectively, “Fujifilm”). Specifically, AntiCancer alleges that Fujifilm has manufactured and
 18 sold certain image analyzers so as to induce infringement of three AntiCancer patents that cover
 19 methods for using green fluorescing protein (“GFP”) to follow the progression of cancerous
 20 tumor cells in a live animal. See First Amended Complaint (“Am. Compl.”) ¶¶ 24-35, 37-63.
 21 AntiCancer has acknowledged, as it must, that none of AntiCancer’s patents can be infringed
 22 solely by the manufacture or sale of an image analyzer. Instead, according to the Amended
 23 Complaint, infringement occurs, if at all, only when a customer uses an image analyzer in a
 24 manner that is covered by the method claims in the patents-in-suit. *Id.* ¶¶ 40, 49 & 58 (alleging
 25 infringement based on manufacture and sale of devices “which can and are be [sic] used to
 26 infringe one or more claims of [a patent-in-suit] by Fujifilm’s customers”).

27 After filing its initial Complaint, AntiCancer allegedly learned that “[o]n May 26, 2009,
 28 Fujifilm and GE Healthcare announced the formation of a ‘strategic alliance,’” pursuant to which

1 Fujifilm “will act as an original equipment manufacturer (OEM) in developing, manufacturing,
 2 and selling to GE Healthcare, Fujifilm image analyzers, to be resold by GE Healthcare to GE
 3 Healthcare’s customers.” *Id.* ¶ 36. Thereafter, AntiCancer amended its Complaint to tack on a
 4 declaratory judgment claim against GE Healthcare, which seeks a declaration that GE
 5 Healthcare’s anticipated future “re-selling” of image analyzers manufactured by Fujifilm will
 6 induce infringement of the patents-in-suit. *Id.* ¶¶ 65-66. The Amended Complaint does not
 7 allege – because it cannot – that GE Healthcare has marketed or sold a single Fujifilm imaging
 8 analyzer for use in a way that would allegedly infringe the AntiCancer patents. Nor does it allege
 9 that GE Healthcare has stated an intent to market image analyzers for such an allegedly infringing
 10 use or an intent to instruct customers on how to use the image analyzers in a manner that would
 11 allegedly infringe the AntiCancer patents.

12 Instead, AntiCancer’s claim against GE Healthcare is based on unsupported speculation
 13 about the possible future behavior of GE Healthcare and its customers. Because the Amended
 14 Complaint alleges no facts to support a contention that GE Healthcare has marketed or will
 15 market Fujifilm image analyzers (or has advised or will advise customers) in a manner to induce
 16 infringement of the patents-in-suit, AntiCancer has failed to establish a real controversy capable
 17 of consideration for declaratory judgment by the Court. Accordingly, AntiCancer’s claim against
 18 GE Healthcare should be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1).

19 In addition, AntiCancer also has not pled any facts giving rise to a claim against GE
 20 Healthcare. Among other things, AntiCancer has failed to allege that (a) GE Healthcare has
 21 marketed or sold any imaging analyzer, or committed any other potentially infringing act, (b) any
 22 GE Healthcare customer has used or stated an intent to use a Fujifilm image analyzer in an
 23 infringing manner, (c) GE Healthcare has knowingly and actively aided or abetted another’s
 24 direct infringement of the patents-in-suit, and/or (d) GE Healthcare possessed the necessary
 25 specific intent to encourage another’s direct infringement. Because AntiCancer has failed to
 26 establish any grounds upon which relief could be granted, AntiCancer’s claim against GE
 27 Healthcare should be dismissed under Rule 12(b)(6) as well.

BACKGROUND

AntiCancer filed its initial Complaint on June 17, 2009. The Complaint asserted claims solely against Fujifilm. AntiCancer alleged that Fujifilm’s use, marketing, and sale of the LAS-4000 image analyzer infringed the following three patents owned by AntiCancer: U.S. Patents Nos. 6,759,038, 6,251,384, and 6,649,159 (hereinafter, the “patents-in-suit”).¹ Complaint (“Compl.”) ¶¶ 35, 36, 44, 45, 53, 54. On August 20, 2009, AntiCancer filed its First Amended Complaint, accusing five additional Fujifilm image analyzers of infringing the patents-in-suit (hereinafter, collectively referred to as the “Accused Products”). Am. Compl. ¶ 35.²

In its Amended Complaint, AntiCancer also added a claim for declaratory relief against GE Healthcare. The factual averments pled in support of that claim are bare bones at best and are based on a strategic alliance that GE Healthcare and Fujifilm announced in May 2009. Am. Compl. at ¶¶ 36, 64-66. Specifically, AntiCancer alleges that:

“[F]ujifilm will act as an original equipment manufacturer (OEM) in developing, manufacturing, and selling to GE Healthcare, Fujifilm image analyzers, to be re-sold by GE Healthcare to GE Healthcare’s customers in the United States and elsewhere under the GE brand in ‘life science research and drug discovery markets.’” *Id.* ¶ 36.

The Amended Complaint further alleges that “[s]hortly GE Healthcare will begin re-selling the Fujifilm image analyzers to customers in the United States.” *Id.* at ¶ 65.

The Amended Complaint does not allege that GE Healthcare has ever marketed or sold any image analyzers. Instead, the allegations of the Amended Complaint make clear that such activities are anticipated but have not yet begun. Nonetheless, without any factual, the Amended Complaint baldly alleges that when GE Healthcare does begin marketing and selling those products, AntiCancer anticipates that GE Healthcare will provide its customers with “instructions on how to use the Fujifilm image analyzers so as to practice the methods claimed in the patents-

¹ The three patents-in-suit claim very specific methods of monitoring cancerous tumor cells, which have been genetically modified to express GFP or fluorophore, in live mammalian test animals by illuminating the subject test animal with a particular wavelength of light that causes the GFP to fluoresce and thereby emit detectable light. Am. Compl. ¶¶ 15, 16, 18, 20.

² In addition to the image analyzer named in the original Complaint, the LAS-4000, in the Amended Complaint AntiCancer also accuses the following Fujifilm luminescent and fluorescent imaging machines: the LAS-1000, LAS-1000plus, LAS-3000, FLA-5100 and FLA-8000, as well as “mini” versions of each LAS-labeled device. Am. Compl. ¶ 35.

1 in-suit.” Am. Compl. ¶ 65.

2 While acknowledging that GE Healthcare has not yet marketed or sold any Accused
 3 Product and that it has never instructed any third parties on how to use such a product in a manner
 4 that might infringe the patents-in-suit, AntiCancer requests a declaratory judgment decreeing that:

5 “GE Healthcare’s *marketing and sales* of the Fujifilm image analyzers and/or *its*
 6 *actual and/or prospective instructions to its U.S. customers on how to use the*
 7 *Fujifilm image analyzers* so as to practice the methods claimed in the
 8 *patents-in-suit* comprise infringement of those patents.” Am. Compl. ¶ 66
 9 [emphasis added].

10 This prayer for declaratory relief has no basis in the factual allegations of the Amended
 11 Complaint, much less in reality. The Amended Complaint itself concedes that GE Healthcare has
 12 not engaged in “marketing or sales of Fujifilm image analyzers” (those activities allegedly will
 13 begin “shortly”), and it alleges nothing regarding any “actual and/or prospective instructions” that
 14 allegedly have been or will be given by GE Healthcare. In short, the Amended Complaint alleges
 15 no facts to support a claim for relief that GE Healthcare has sold or will sell image analyzers for
 16 use in a way that allegedly infringes the patents-in-suit, as opposed to the multitudes of other ways
 17 in which customers may use image analyzers.

18 ARGUMENT

19 **A. The Amended Complaint Fails to Allege Facts That Establish an Actual Controversy
 20 With Respect to GE Healthcare, as Required to Invoke This Court’s Jurisdiction**

21 AntiCancer has not and cannot meet its burden of alleging facts sufficient to establish the
 22 immediacy and reality required to support subject matter jurisdiction for a declaratory judgment
 23 action under 28 U.S.C. § 2201(a). A court may exercise jurisdiction over a declaratory judgment
 24 claim, and avoid issuing an impermissible advisory opinion, only if the claim satisfies the
 25 U.S. Constitution’s Article III requirement of an actual “case or controversy.” *Veoh Networks,
 26 Inc. v. UMG Recordings, Inc.*, 522 F. Supp. 2d 1265, 1268 (S.D. Cal. 2007). Lacking a case or
 27 controversy, there can be no federal subject matter jurisdiction, and dismissal under 12(b)(1) is
 28 required.

1 A party seeking relief under the Declaratory Judgment Act bears the burden of
 2 establishing jurisdiction by alleging facts in its complaint sufficient to establish the existence of
 3 an actual controversy that is “real, substantial, and capable of specific relief through a decree of
 4 conclusive character.” *Veoh*, 522 F. Supp. 2d at 1269 (citing *Aetna Life Ins. Co. v. Haworth*, 300
 5 U.S. 227, 240-241, 57 S. Ct. 461, 81 L. Ed. 617 (1937)) (stating that the controversy “must not be
 6 nebulous or contingent, but must have taken on a fixed and final shape so that a court can see
 7 what legal issues it is deciding and what effects its decision will have on the adversaries” (citing
 8 *Pub. Serv. Com. v. Wycoff Co.*, 344 U.S. 237, 244, 73 S. Ct. 236, 97 L. Ed. 291 (1952)). To
 9 determine whether a complaint rises to the level of an actual controversy, the court must examine
 10 “whether the facts alleged, under all the circumstances, show that there is a substantial
 11 controversy, between parties having adverse legal interests, of sufficient immediacy and reality to
 12 warrant the issuance of a declaratory judgment.” *Id.* (citing *MedImmune, Inc. v. Genentech, Inc.*,
 13 549 U.S. 118, 127, 127 S. Ct. 764, 771 (2007)).

14 To show “sufficient immediacy and reality” warranting a declaratory judgment in a patent
 15 infringement case, a plaintiff must allege that there has already been concrete action taken, or
 16 imminent and definite plans made to pursue a course of conduct that would infringe the patent.
 17 Absent such a showing, declaratory relief is unavailable. For example, in *AB Volvo v. Eaton-Kenway, Inc.*, the court dismissed declaratory judgment claims for threatened patent
 18 infringement, patent infringement, inducement and contributory infringement where the
 19 complaint failed to allege any specific acts of present infringement or the immediate capacity to
 20 infringe. 582 F. Supp. 579, 582-84 (N.D. Ohio 1984) (dismissing DJ claim where allegedly
 21 infringing system was still subject to modification or cancellation). *See also, Sierra Applied*
 22 *Scis., Inc. v. Advanced Energy Inds., Inc.*, 363 F.3d 1361, 1379-1381 (Fed. Cir. 2004) (affirming
 23 dismissal of DJ claim where the design of the accused product was not fixed at the time the
 24 complaint was filed, there was no advertising literature, and it was conceivable that the product
 25 would never be sold for an infringing use); *Lang v. Pacific Marine and Supply Co., Ltd.*, 895 F.2d
 26 761, 764-765 (Fed. Cir. 1990) (dismissing DJ complaint for failure to meet the actual controversy
 27 requirement where the accused product was not to be completed until after the complaint was
 28 filed).

1 filed, and where the defendants had not distributed any sales literature);³ *Eisai Co., Ltd. v. Mutual*
 2 *Pharm. Co., Inc.*, 2007 WL 4556958, Case No. 06-3613, *18 (D.N.J. Dec. 20, 2007) (DJ claim
 3 lacked sufficient immediacy when potential infringement depended on future contingencies of
 4 obtaining FDA approval and deciding to market the allegedly infringing product).

5 The Federal Circuit has held that the burden is on the party claiming declaratory judgment
 6 jurisdiction to establish that such jurisdiction existed at the time the claim for declaratory relief
 7 was filed and that it has continued since. *Benitec Australia, Ltd. v. Nucleonics, Inc.*, 495 F.3d
 8 1340, 1344 (Fed. Cir. 2007). Although AntiCancer alleges that GE Healthcare will begin
 9 re-selling Fujifilm image analyzers “shortly,” Am. Compl. ¶ 65, AntiCancer has not alleged any
 10 facts that would establish an act or intent by GE Healthcare to market or instruct customers of
 11 image analyzers in a manner that would induce infringement of the patents-in-suit. *See Sierra*
 12 *Applied Scis., Inc.*, 363 F.3d at 1376 (holding that “post-complaint conduct by the accused
 13 infringer” is not relevant to a court’s declaratory judgment jurisdiction: “Later events may not
 14 create jurisdiction where none existed at the time of filing”). As in *Benitec*, where the Federal
 15 Circuit held that an alleged intent to develop infringing technologies in the future was of
 16 insufficient immediacy and reality to support declaratory judgment jurisdiction, the Court lacks
 17 subject matter jurisdiction in this case due to AntiCancer’s failure to plead an immediate, real
 18 controversy through allegations identifying an immediacy or definiteness of any predicted future
 19 infringement or induced infringement by GE Healthcare. 495 F.3d at 1349; *accord, e.g., Sierra*
 20 *Applied Scis., Inc.*, 363 F.3d at 1379-1380 (plaintiff failed to meet its burden to show both
 21 immediacy and reality where design of accused product was indefinite and no advertising
 22 existed).

23

24 ³ Although the two-prong test for determining an actual controversy relied on in *Lang* was altered by the
 25 “all-the-circumstances” standard subsequently set forth in *MedImmune*, the court’s holding in *Lang* remains
 26 governing law since that court reached its conclusion without applying the “reasonable apprehension of suit”
 27 prong of the test that was called into question in *MedImmune* and instead, dismissed the case for lack of
 28 “sufficient immediacy and reality” as required by *MedImmune*. *Geisha, LLC v. Tuccillo*, 525 F. Supp. 2d 1002,
 1015 (N.D. Ill. 2007) (dismissing DJ claim where defendant had made no concrete preparations to infringe
 plaintiff’s asserted trademark despite expressing intent to use the mark). Subsequent to *MedImmune*, courts
 have continued to rely on the holding and analysis in *Lang*. *See, e.g., Eisai*, 2007 WL 4556958 at *17 (*Lang*’s
 decisive “imminence” factor remains part of the *MedImmune* standard); *Geisha*, 525 F. Supp. 2d at 1015-16.

Even if the Amended Complaint had alleged that GE Healthcare has taken concrete steps toward marketing and/or selling some or all of the Accused Products, AntiCancer's claim still would lack sufficient concreteness or reality to create a legitimate case or controversy to be resolved by the Court, as opposed to a speculative request for an advisory opinion. AntiCancer alleges only future acts by GE Healthcare that AntiCancer speculates will amount to induced infringement. Those allegations are insufficient to create a case or controversy. Even accepting the allegations of the Amended Complaint as true, it is fully consistent with those allegations that GE Healthcare will market and/or sell the Accused Products only in ways that plainly do not infringe its patents. *AB Volvo*, 582 F.Supp. at 583-584. Indeed, the Amended Complaint's failure to allege any *facts* about GE Healthcare's conduct and/or plans for marketing the Accused Products or for instructing its customers is fully consistent with the reality that GE Healthcare has no plan to market, sell, or instruct in a manner that could be accused in good faith of infringing the patents-in-suit. Because AntiCancer's allegations are based solely on AntiCancer's speculation about conduct that GE Healthcare has not undertaken and may never undertake, the Amended Complaint fails to invoke this Court's declaratory judgment jurisdiction.⁴

B. The Amended Complaint Fails to State a Claim Against GE Healthcare Upon Which Relief Can Be Granted

Under Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed for failure to state a claim if the factual allegations do not raise the right to relief above a speculative level.

See Bell Atlantic v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929 (2007). In

⁴ If the Court were to conclude that the Amended Complaint somehow alleges facts sufficient to support declaratory judgment jurisdiction, it nonetheless could exercise its discretion to dismiss AntiCancer's declaratory judgment claim. *MedImmune*, 549 U.S. at 136 (holding that the language of the Declaratory Judgment Act that a court "may declare the rights" of a party "has long been understood 'to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants'" (quoting *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995))). Thus, while a court has no discretion to adjudicate a claim unless it presents a concrete case or controversy, it does have discretion to dismiss a declaratory judgment claim even when subject matter jurisdiction exists. *Id.* In deciding whether to entertain or dismiss a declaratory judgment claim, courts may consider equitable, prudential and policy arguments. *Id.*; *see also AB Volvo*, 582 F. Supp. at 582 n.2 (stating that a court may refuse to proceed with a declaratory action if the action will not serve a useful purpose or is otherwise undesirable). Because AntiCancer's Fourth Claim for Relief serves no useful purpose, particularly since AntiCancer could initiate an infringement action should GE Healthcare ever engage in acts that actually infringe or induce infringement of the patents-in-suit, GE Healthcare respectfully requests that the Court dismiss AntiCancer's claim against GE Healthcare in the exercise of its discretion, even if it concludes that jurisdiction over that claim exists. *See AB Volvo*, 582 F. Supp. at 582.

1 ruling on a motion pursuant to Rule 12(b)(6), a court must construe the pleadings in the light most
 2 favorable to the plaintiff, and must accept as true all material allegations in the complaint, as well
 3 as any reasonable inferences to be drawn there-from. *See Chang v. Chen*, 80 F.3d 1293 (9th Cir.
 4 1996). However, “conclusory allegations and unwarranted inferences are insufficient to defeat a
 5 motion to dismiss.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996). Further,
 6 “threadbare recitals of the elements of a cause of action, supported by mere conclusory
 7 statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950-1951 (May 18, 2009)
 8 (finding that allegations of complaint amounted to “nothing more than a ‘formulaic recitation of
 9 the elements’ of [the asserted claim]”, and thus were not entitled to be assumed true.) If
 10 amendment of the pleadings would be futile, dismissal *with prejudice* is proper. *Steckman v. Hart*
 11 *Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998) (affirming dismissal with prejudice in favor of
 12 defendants before any discovery was conducted).

15 AntiCancer acknowledges that its only possible claim against GE Healthcare would be a
 16 claim for induced infringement. Am. Compl. ¶ 65. However, AntiCancer’s allegations fall far
 17 short of the standard required to state such a claim under 35 U.S.C. § 271(b). AntiCancer has
 18 failed to plead any of the requirements for a claim of induced infringement. AntiCancer would
 19 need to allege: (1) a specific act of direct infringement by a customer or other third party, (2) that
 20 GE Healthcare knew of the patents-in-suit, (3) that GE Healthcare knowingly and actively aided
 21 and abetted the direct infringement, and (4) that GE Healthcare possessed specific intent to
 22 encourage the direct infringement. *See, e.g., Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 774 (Fed.
 23 Cir. 1993); *DSU Med. Corp. v. JMS Co., Ltd.*, 471 F.3d 1293, 1304 (Fed. Cir. 2006) (*en banc*).

25 AntiCancer has not pled any of these elements with respect to GE Healthcare. AntiCancer
 26 has not alleged that GE Healthcare has marketed or sold an Accused Product, let alone in a
 27 manner that would encourage a prospective customer to use a product in a manner that would
 28

1 directly infringe the patents-in-suit. Am. Compl. ¶ 65 (alleging that GE Healthcare will begin
 2 marketing or sales of the accused Fujifilm image analyzers “shortly”). Nor has AntiCancer
 3 alleged anything that could indicate that GE Healthcare is undertaking any preparations or has
 4 definite intentions to induce infringement. Furthermore, AntiCancer has not alleged, and has no
 5 basis to allege, that a future customer of GE Healthcare will use the Accused Products in a
 6 manner so as to directly infringe the patents-in-suit.
 7

8 Because AntiCancer’s claim consists of speculative, hypothetical, and conclusory
 9 assertions about future conduct, as opposed to allegations of fact, and because AntiCancer has not
 10 alleged and cannot allege facts that would support a claim for induced infringement, AntiCancer
 11 has not stated a claim upon which relief can be granted under the Declaratory Judgment Act.
 12 AntiCancer’s claim against GE Healthcare should therefore be dismissed with prejudice under
 13 Rule 12(b)(6).⁵ *Ashcroft*, 129 S. Ct. at 1950-1951; *Steckman*, 143 F.3d at 1298.
 14

15 **CONCLUSION**

16 For the reasons set forth above, GE Healthcare respectfully requests that the Court dismiss
 17 with prejudice AntiCancer’s declaratory judgment claim against GE Healthcare.
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25 ⁵ AntiCancer’s claim is so frivolous that it borders on a violation of Rule 11. That is particularly true in light of
 26 the fact that this Court has previously dismissed an AntiCancer complaint for noncompliance with the same
 27 pleading requirements that AntiCancer failed to satisfy in this case. *See AntiCancer, Inc. v. Xenogen Corp.*, 248
 28 F.R.D. 278, 282 (S.D. Ca. 2007)(dismissing complaint under *Bell Atlantic v. Twombly* based on AntiCancer’s
 failure to plead “[f]acts beyond a bare statement of direct and indirect patent infringement so as to demonstrate
 a plausible entitlement to relief.”). GE Healthcare is not at this point seeking sanctions under Rule 11 or
 otherwise, but it expressly reserves the right to do so in the future.

1 Dated: October 9, 2009

Respectfully submitted,

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3

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27 Attorneys for Defendant GE HEALTHCARE INC.
28

PROOF OF ELECTRONIC SERVICE

I am a citizen of the United States, more than eighteen years old and not a party to this action. My business address and place of employment is Orrick, Herrington & Sutcliffe LLP, 777 South Figueroa Street, Suite 3200, Los Angeles, CA 90017.

I hereby certify that, on October 9, 2009, I have taken steps to cause

**GE HEALTHCARE INC.’S NOTICE OF MOTION, MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(B)(1) AND 12(B)(6), AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF GE HEALTHCARE INC.’S MOTION
TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(1) AND 12(B)(6), when filed through
the Electronic Case Filing (“ECF”) system, to be sent electronically to the registered participant
as identified on the Notice of Electronic Filing (“NEF”), including the following:**

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The NEF shows no non-registered participants.

Executed on October 9, 2009, at Los Angeles, California.

s/ William H. Wright
William H. Wright